

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1904 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
L G THAKAR

Versus

STATE OF GUJARAT

-----  
Appearance:

MR AJ SHASTRI for Petitioner

MR HL JANI, ASST.GOVERNMENT PLEADER for Respondent No. 1

SERVED BY DS for Respondent No. 2

-----  
CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 25/06/97

ORAL JUDGEMENT

Rule.

In response to the notice issued earlier, learned  
Asst.Govt. Pleader Mr.Jani appears for respondent no.1.  
Though duly served, no appearance is being filed on

behalf of respondent no.2. The controversy is restricted between the petitioner and the respondent no.1. Service of Rule, therefore, is being waived by learned Asst.Govt. Pleader Mr.Jani for respondent no.1 and with the consent of the parties, the matter is taken up for final hearing.

The petition relates to the post of District Commandant, Home Guards, on which post, the petitioner was appointed by order dated 8.9.1995, at Annexure.B, page no.19. He came to be relieved of that post, by order dated 30.11.1996, at Annexure.C, page no.20. The grievance of the petitioner is first, that, only the Commandant General, Home Guards, could have removed him from service and that, if at all he was to be removed, there should have been some notice issued to him. It is also submitted that, the post of District Commandant, Home Guards, has a fixed tenure, namely, three years.

The case is covered under the provisions of the Bombay Home Guards Act, 1947 and the Rules framed thereunder. The State Government is relying upon the provision of sub-section (2) of Section 2 of the said Act, where the State Government shall appoint a Commandant of each of the Home Guards, constituted under sub-section (1). Annexure.B, page no.19 is an order issued by the Government in its Home Department under the signature of its Section Officer and, therefore, the submission was made that, the appointment is made by the State Government and the impugned order at Annexure.C, page no.20 is also made by the very same authority, i.e. the State Government. In other words, the appointing authority itself has passed the removal order which has the power to do so.

The petitioner is relying upon the provisions of Section 6B(1A) of the Act. The amendment came to be made in the year 1954 and the said amended provision starts with 'non-obstante clause' and accordingly, it is the Commandant who has power with regard to the District, and the Commandant General has the power with regard to the members of the Home Guards appointed to the post under his immediate control and, therefore, it will include the post of District Commandant.

So far as the tenure is concerned, there is provision in Rule 8 of the Rules of 1953 framed under the said Act and the term fixed is that of three years. In that very Rule, there is a provision that, if the services of a member of the Home Guards is to be terminated during the said tenure, it can be so done by the Commandant or the Commandant General as the case may

be after giving one months's notice. Admittedly, the termination is during the period of three years' time, i.e. during the subsistence of the tenure and it is nobody's case that any notice ever came to be served upon the petitioner.

Almost ten identical matters were dealt with on an earlier occasion, by a Division Bench of this Court, decided on 27.1.1997. Learned Acting Chief Justice sitting with Mr. Justice C.K. Thakkar, speaking for the Bench has clearly held that, the action on the line of the impugned order is bad. For doing so, the aforesaid Rule 8 as well as Section 6B(1A) referred to above were taken into consideration and one more Rule 9-A also came to be considered where the provision is made for exercise of powers of discharge and when they can be exercised. When a reference to the power given under sub-section (1A) of Section 6B is made, it provides that this power cannot be exercised till the authority exercising the power is satisfied that the member to be discharged has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation.

On the basis of the aforesaid statutory material, the impugned order, obviously, cannot be sustained. In that conclusion, I am definitely fortified by the aforesaid Division Bench decision. Naturally, the result therefore is, that the petition succeeds. Accordingly the petition is allowed. The impugned order is set aside and the respondents are directed to forthwith allow the petitioner to discharge his duties as District Commandant of Home Guards, at Surendranagar. Rule is made absolute accordingly.

\*\*\*\*\*

sreeram.